

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

BILLY M. GARMOU,

Plaintiff,

v.

Case No. 15-12161

KONDAUR CAPITAL CORP., et. al.,

Defendants,

**ORDER *SUA SPONTE* GRANTING PLAINTIFF LEAVE TO FILE A SUR-REPLY
BRIEF**

Pending before the court is Defendants' "Motion to Dismiss and/or for Summary Judgment," (Dkt. # 10), filed January 20, 2016. Although the matter has been fully briefed, upon review of the submitted materials, the court concludes that further briefing is necessary on two issues related to Plaintiff's claim under the federal Real Estate Settlement Procedures Act, 12 U.S.C. §§ 2601-17.

In their original Motion, Defendants argued that "[t]here is no evidence to support Plaintiff's claim that he submitted a loss mitigation application to Kondaur." (Dkt. # 10, Pg. ID 100). In response, Plaintiff provided the court with a copy of a mortgage assistance application he allegedly submitted to Defendants via fax on April 28, 2015. (Dkt. # 13, Pg. ID 298-305.) The fax cover page shows that this document was directed to "Tonya" at Kondaur Capital, and lists as the fax number (877)-566-3287. (*Id.* at Pg. ID 299.) Nevertheless, the fax confirmation page shows that the fax was sent to a different telephone number entirely, (248)-205-4118. In their reply, Defendants argue that

"[(248)-205-4118] is not a fax number for Kondaur and Kondaur never received this alleged fax, nor has Plaintiff ever demonstrated this occurred." (Dkt. # 14, Pg. ID 310.) Furthermore, Defendants argue that even if they did receive the application, it was not submitted early enough to prohibit the foreclosure sale under the regulations.

Because these arguments were not fully articulated in Defendants' original Motion, the court—acting *sua sponte* and in the interest of justice—will grant Plaintiff the opportunity to respond. Accordingly,

IT IS ORDERED that Plaintiff is GRANTED LEAVE to file a sur-reply brief, narrowly focused on the issues outlined above, on or before **May 23, 2016**. The brief shall be no longer than five pages, and may include additional exhibits as necessary to address the specific issues discussed.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: May 16, 2016

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, May 16, 2016, by electronic and/or ordinary mail.

s/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522